

Chapter 311: PORTFOLIO REQUIREMENT

SUMMARY: This Chapter establishes requirements and standards for implementing the eligible resource and new renewable resource portfolio requirement.

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§ 1 PURPOSE

The purpose of this Chapter is to implement the State's policy to encourage the development and generation of electricity from renewable, efficient and indigenous resources through the adoption of requirements and standards for an eligible resource and new renewable resource portfolio requirement.

§ 2 DEFINITIONS

- A. **Aggregator.** "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.
- B. **Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity, provided such entity is not engaged in the purchase or resale of electricity directly with a competitive electricity provider, and provided further that such customers contract for electricity directly with a competitive electricity provider.
- C. **Competitive Electricity Provider.** "Competitive electricity provider" means a marketer, broker, aggregator, standard offer provider or any other entity selling electricity to the public at retail in Maine.
- D. **Compliance Period.** "Compliance period" means the time period over which the portfolio requirement must be satisfied.
- E. **GIS.** "GIS" means the NEPOOL Generation Information System or successor system.
- F. **GIS Certificates.** "GIS certificates" mean certificates created pursuant to the NEPOOL Generation Information System that represent attributes of electric power and that may be traded separately from the energy commodity.
- G. **Eligible GIS Certificates.** "Eligible GIS certificates" mean GIS certificates that correspond to eligible or new renewable generation resources as specified in this Chapter.
- H. **Multi-Fuel Facility.** "Multi-fuel facility" means an electric generation facility that uses more than one fuel or technology in the production of electricity.
- I. **ISO-NE.** "ISO-NE" means the Independent System Operator of the New England bulk power system or successor organization.
- J. **ISO-NE Control Area.** "ISO-NE control area" means the area in which the ISO-NE operates the New England bulk power system.
- K. **Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.

- L. **Nameplate Capacity.** "Nameplate capacity" means the capacity rating of a generation facility as specified by the manufacturer.
- M. **NMISA.** "NMISA" means the Northern Maine Independent System Administrator or successor organization.
- N. **Pumped-Storage Hydroelectric Facility.** "Pumped-storage hydroelectric facility" means a hydroelectric generation facility that utilizes pumping facilities and a storage reservoir in the production of electricity.
- O. **Renewable Fuel or Technology.** "Renewable fuel or technology" means fuel cells, tidal power, solar energy, wind power, geothermal power, hydroelectric energy, biomass and municipal solid waste.
- P. **Standard Offer Provider.** "Standard offer provider" means a provider of standard offer service chosen pursuant to Chapter 301 of the Commission's rules.

§ 3 NEW RENEWABLE RESOURCES; CLASS I

- A. **Requirement.** Except as provided in subsection D, beginning January 1, 2008, each competitive electricity provider, including standard offer providers, must account for no less than the percentage specified below of its total kilowatt-hour sales to customers in Maine with electric energy associated with new renewable resources in accordance with the provisions of this Chapter.
 - 1. One percent for the period from January 1, 2008 to December 31, 2008;
 - 2. Two percent for the period from January 1, 2009 to December 31, 2009;
 - 3. Three percent for the period from January 1, 2010 to December 31, 2010;
 - 4. Four percent for the period from January 1, 2011 to December 31, 2011;
 - 5. Five percent for the period from January 1, 2012 to December 31, 2012;
 - 6. Six percent for the period from January 1, 2013 to December 31, 2013;
 - 7. Seven percent for the period from January 1, 2014 to December 31, 2014;
 - 8. Eight percent for the period from January 1, 2015 to December 31, 2015;
 - 9. Nine percent for the period from January 1, 2016 to December 31, 2016; and
 - 10. Ten percent for the period from January 1, 2017 to December 31, 2017 and for each year thereafter.

B. New Renewable Resources. New renewable resources used to satisfy the portfolio requirement of this section must meet the requirements of this subsection.

1. **Resource type.** A new renewable resource is a generation facility that generates electricity with one or more of the following technologies or fuels:
 - a. fuel cells;
 - b. tidal power;
 - c. solar arrays and installations;
 - d. wind power installations;
 - e. geothermal installations;
 - f. hydroelectric generators that meet all state and federal fish passage requirement, or
 - g. biomass generators, including generators fueled by landfill gas.
2. **Capacity limit.** Except for wind power installation, a new renewable resource must not have a nameplate capacity that exceed 100 megawatts.
3. **Vintage.** A new renewable resource is a generation facility that:
 - a. has an in-service date after September 1, 2005;
 - b. has been added to an existing facility after September 1, 2005;
 - c. has not operated for at least two consecutive years or was not recognized by the ISO-NE or NMISA as a capacity resource prior to September 1, 2005, and, after September 1, 2005, resumed operation or was recognized by the ISO-NE or NMISA or as a capacity resource; or
 - d. has been refurbished after September 1, 2005 and is operating beyond its previous useful life or is employing an alternate technology that significantly increases the efficiency of the generation process.
4. **Commission certification.** A generation facility may not be used to satisfy the portfolio requirement of this section unless the Commission certifies the generation facility as a new renewable resource.
 - a. **Process.** An owner or operator of a generation facility may seek Commission certification through the submission of a petition for certification. The Commission shall either certify the generation facility as a new renewable resource or state the reasons for the denial of the certification within 90 days of the submission of a complete application. If additional time is required, the Administrative Director may extend the time period for review. The Commission shall provide an opportunity for public comment if the petitioner seeks certification under the vintage

categories specified in paragraph 3 (b),(c) or (d). The Commission may revoke a certification if there is a material change in circumstance that renders the generation facility ineligible as a new renewable resource.

- b. **Petition.** The petition for certification shall include the following information:
- (i) Name and address of petitioner;
 - (ii) Location of the generation facility;
 - (iii) Description of the generation facility, including fuel type, capacity and initial commercial operation date;
 - (iv) The vintage category under paragraph 3 for which certification is sought
 - (v) Demonstration of qualification for a comparable portfolio requirement in another state, if applicable;
 - (vi) Historical output and means to determine incremental output, if certification is sought under paragraph 3 (b);
 - (vii) The time period for which the facility did not operate, the reasons the facility did not operate and the date operation resumed; if certification is sought under paragraph 3 (c);
 - (viii) A description of facility refurbishment, the degree to which the useful life has been extended, and the use of an alternate technology and resulting efficiency increases, if certification is sought under paragraph 3 (d); and
 - (ix) Any other information that the Commission determines to be necessary or useful.

C. **Alternative Compliance Mechanism.** The requirements of this section may be satisfied by an alternative compliance payment according to this subsection. The payment for an applicable year shall be made to the Commission by July 1 of the following year.

1. **Payment Amount.** The amount of the alternative compliance payment shall equal the alternative compliance payment rate multiplied by the number of deficient kilowatt-hours. For purposes of this subsection, deficient kilowatt-hours are the number of kilowatt-hours required to be served by new renewable resources minus the number of kilowatt-hours that are actually served by new renewable resources.
2. **Payment Rate.** The alternative compliance base rate shall be \$57.12 per megawatt-hour. Beginning in 2008, the Commission will adjust the alternative compliance payment rate by the annual change in the U.S. Bureau of Labor Statistics Consumer Price Index. For each year, the Commission will calculate

and publish the alternative compliance payment rate no later than January 31 for applicability in that year.

3. **Use of Funds.** The Commission shall deposit all funds collected pursuant to this subsection in the Renewable Resource Fund established pursuant to 35-A M.R.S.A. § 3210(6) to be used to fund research, development and demonstration projects related to renewable energy technologies.

D. **Suspensions.** Suspensions of scheduled increases in the portfolio requirement of this section are governed by this subsection.

1. **Alternative Compliance Payments.** The Commission shall temporarily suspend the scheduled percentage increase in the new renewable resource portfolio requirement if reliance on alternative compliance payments made pursuant to subsection C in the aggregate is more than 50% of the total statewide obligation in three consecutive years. A suspension of the scheduled percentage increase under this provision shall be for one year.
2. **Insufficient Development.** The Commission may suspend a scheduled percentage increase in the new renewable portfolio requirement if by March 31st of the years 2010, 2012, 2014, and 2016, the Commission determines that investment in new renewable resources over the preceding two years has not been sufficient and that the resulting use of alternative compliance payments made pursuant to subsection C has burdened electricity customers in Maine without providing the benefits of new renewable resources. A suspension of the scheduled percentage increase under this provision shall be for one year unless the Commission otherwise determines that a longer suspension is warranted.
3. **Resumption of Scheduled Increases.** The Commission may resume increases in the new renewable resource portfolio requirement that are limited to no more than one percentage point per year over the previous year.

E. **Annual Reports.** No later than March 31, 2008 and annually thereafter, the Commission shall submit a report regarding the status of new renewable capacity resources in the State and New England, and compliance with the portfolio requirement required by this section to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters. The report shall include, but is not limited to, a description of new renewable capacity resources available to meet the portfolio requirement required by this section, documentation of the loss of any existing renewable generation capacity in the State, the status of implementation of the new renewable resources portfolio requirement, including any suspensions pursuant to subsection D, and recommendations to stimulate investment in new renewable resources.

F. **Exemption.** Retail electricity sales pursuant to a supply contract or standard-offer service arrangement executed by a competitive electricity provider that is in effect on or before September 20, 2007, is exempt from the requirements of this section until the end date of the current term of the supply contract or standard-offer service arrangement.

§ 4 ELIGIBLE RESOURCE REQUIREMENT; CLASS II

- A. **Requirement.** Each competitive electricity provider, including standard offer providers, must account for no less than 30% of its total kilowatt-hour sales to customers in Maine with electric energy associated with eligible resources in accordance with the provisions of this Chapter.
- B. **Eligible Resources.** Eligible resources used to satisfy the portfolio requirement of this section must be either a renewable resource or an efficient resource as specified in this subsection.
 1. **Renewable Resources.** For purposes of this Chapter, a renewable resource is:
 - a. a qualifying small power production facility under the Federal Energy Regulatory Commission rules, 18 Code of Federal Regulations, Part 292, Subpart B, as in effect on January 1, 1997, (attached as an Appendix to this Chapter); or
 - b. a generation facility whose nameplate capacity does not exceed 100 megawatts and that generates electricity with one or more of the following technologies or fuels:
 - i. fuel cells;
 - ii. tidal power;
 - iii. solar arrays and installations;
 - iv. wind power installations;
 - v. geothermal installations;
 - vi. hydroelectric generators;
 - vii. biomass generators, including generators fueled by landfill gas; or
 - viii. generators fueled by municipal solid waste in conjunction with recycling.
 2. **Efficient Resources.** For purposes of this Chapter, an efficient resource is a qualifying cogeneration facility under the Federal Energy Regulatory Commission rules, (18 Code of Federal Regulations, Part 292), Subpart B, as in effect on January 1, 1997 (attached as an Appendix to this Chapter), was constructed prior to January 1, 1997, and meets the following efficiency standard: During any calendar year, the sum of the useful power output and the useful thermal energy output of the facility is no less than 60% of the total energy input to the facility. For purposes of this paragraph, the term "useful power output" means the electrical or mechanical energy made available for use, exclusive of any energy used in the power production process. For purposes of this paragraph, the term "useful thermal energy" means thermal energy made

available to an industrial or commercial process, net of any heat contained in condensate return and makeup water, used in a heating application or used in a space cooling application.

§ 5 PROVIDER OBLIGATIONS

- A. **Annual Obligation.** Except as provided for in subsection B, each competitive electricity provider must satisfy the portfolio requirements of this Chapter over a 12-month compliance period ending on December 31 of each year.
- B. **New Providers.** The compliance period for competitive electricity providers that provide service to customers in Maine for less than a calendar year is as specified in this subsection.
 - 1. **Service Greater Than Six Months.** For competitive electricity providers that begin service to customers in Maine prior to July 1 of any year, the portfolio obligations must be satisfied over a compliance period from the beginning of service until the following December 31.
 - 2. **Service Less Than Six Months.** For competitive electricity providers that begin service to customers in Maine on or after July 1 of any year, the portfolio obligations must be satisfied over a compliance period from the beginning of service until the second December 31 following the initiation of service.
- C. **Customer Representation.** If a competitive electricity provider represents to a customer that the provider is selling to the customer a portfolio of supply sources that includes more eligible or new renewable resources than is required by this Chapter, the resources used to supply the customers' load may not be used to meet the aggregate requirements of this Chapter.
- D. **Resource Duplication.** Energy or GIS certificates may not be used to satisfy both the eligible resource requirement (section 3 of this Chapter) and the new renewable resource requirement (section 4 of this Chapter).
- E. **Aggregators and Brokers.** The obligations of this Chapter do not apply to aggregators and brokers.
- F. **Pine Tree Zones.** The sale of electricity by a competitive electricity provider to a qualified Pine Tree Development Zone business established under Title 30-A is exempt from the requirements of this Chapter and, at the request of the competitive electricity provider, sales to qualified Pine Tree Development Zone businesses must be excluded from any calculation by the commission to determine compliance with this Chapter. This subsection is repealed by operation of statute on December 31, 2009.
- G. **Advisory Ruling.** Any competitive electricity provider or interested person may request an advisory ruling from the Commission to determine whether a particular generation facility is an eligible resource, a new renewable resource or whether particular GIS certificates may be used to satisfy the requirements of this Chapter. The Commission shall provide interested persons with notice and an opportunity to be heard on requests for advisory rulings pursuant to this subsection.

§ 6 VERIFICATION; REPORTING

- A. **Provider Demonstration.** Each competitive electricity provider has the obligation to demonstrate compliance with the portfolio requirement.
- B. **Verification Method.** Beginning with service in the year 2002, competitive electricity providers must verify compliance with the portfolio requirement as specified in this subsection.
 - 1. **ISO-NE Control Area.** For service in the ISO-NE control area, verification of compliance with the portfolio requirements must be through eligible GIS certificates. For purposes of compliance with this provision, all competitive electricity providers must have at least one Maine GIS sub-account. Entities that have contractual rights to the output of transmission and distribution utility qualifying facility entitlements that have not been provided associated GIS certificates may use the contractual rights to the output of the entitlements to demonstrate compliance with the eligible resource portfolio requirement in Section 4.
 - 2. **NMISA Area.** For service in the NMISA area, verification of compliance with the portfolio requirement must be through market settlement data and other documentation that reveal the resources used to serve customers.
- C. **Other Jurisdictions.** Energy or GIS certificates used to satisfy obligations in other jurisdictions shall not be used to satisfy the portfolio requirements of this Chapter.
- D. **Physical Deliverability.** The source of GIS certificates used to satisfy the portfolio requirement must be energy that is physically delivered to the ISO-NE control area. In circumstances in which this Chapter allows entitlements to qualifying facility power to be used to satisfy the portfolio requirement in lieu of GIS certificates, energy associated with the entitlements must be physically delivered to the ISO-NE control area. Energy used to satisfy the portfolio requirements must be physically delivered to the NMISA area. For purposes of this Chapter, energy physically delivered is energy that is recognized pursuant to the rules of the ISO-NE or NMISA as serving load obligations in New England or is otherwise used to serve electricity load within the ISO-NE or NMISA control areas.
- E. **Multi-Fuel Facilities.** For service in the ISO-NE control area, multi-fuel facilities shall be treated in accordance with the GIS rules. For service in the NMISA area, energy from a multi-fuel facility must be generated using an eligible resource or a new renewable resource to satisfy the portfolio requirements of this Chapter.
- F. **Pumped-Storage Hydroelectric Facilities.** For service in the ISO-NE control area, pumped storage hydroelectric facilities shall be treated in accordance with the GIS rules. For service in the NMISA area, energy from pumped-storage hydroelectric facilities must serve all of its pumping requirements using an eligible resource or a new renewable resource to satisfy the portfolio requirements of this Chapter.

- G. **Annual Reports.** On or before July 1 of each year, each competitive electricity provider must submit an annual report that contains information that documents compliance with the portfolio requirements of this Chapter over the previous compliance period. At a minimum, the annual report must include the following information for the compliance period:
1. total retail kilowatt-hour sales in Maine;
 2. total retail kilowatt-hour sales in Maine served from eligible resources and new renewable resources;
 3. reports from the GIS Administrator for service in the ISO-NE control area;
 4. a description of the eligible resources and new renewable resources used to serve customers in the Maritimes control area, including the fuel type and the amount of kilowatt-hour sales in Maine from each eligible resource and new renewable resource;
- H. **Officer Certification.** Each annual report must contain a certification by a corporate officer that the competitive electricity provider has complied with the portfolio requirements of this Chapter and that all eligible GIS certificates or eligible resources and new renewable resources used to satisfy the portfolio requirements in Maine have not been used by the competitive electricity provider to satisfy any load obligations in other jurisdictions.
- I. **Initial Demonstration Statements.** At the time of application for a license pursuant to Chapter 305, each competitive electricity provider must submit an initial demonstration statement. The initial demonstration statement shall contain an estimate of retail sales in Maine over the compliance period and a description of the means by which the competitive electricity provider will comply with the portfolio requirements, including contracts or entitlements to eligible generation facilities.
- J. **Additional Information.** The Commission may at any time request and obtain information from a competitive electricity provider that the Commission determines is needed to monitor or enforce compliance with this Chapter.
- K. **Audits.** The Commission may at any time conduct an audit of any competitive electricity provider to verify compliance with the portfolio requirements of this Chapter. Upon request by the Commission, a competitive electricity provider must provide any information that the Commission determines is needed to conduct the audit and verify compliance with this Chapter.
- L. **Rejection of Certificates.** The Commission may reject the use of certain GIS certificates as a means to satisfy the portfolio requirements of this Chapter if it finds that the source of GIS certificates is not an eligible resource or a new renewable resource, that rejection is necessary to avoid the double counting of electricity attributes or for other good cause.
- M. **Generation Facilities.** The Commission may at any time conduct an investigation into whether the generation source of designated energy or eligible GIS certificates is an eligible resource or a new renewable resource for purposes of this Chapter. The Commission may request and obtain information from a generation facility that the

Commission determines is needed to verify the accuracy of a certification as an eligible resource or a new renewable resource under the requirements of this Chapter. The Commission may reject the use of GIS certificates pursuant to section 6(L) of this Chapter if a generation facility fails to comply with a request for information made pursuant to this provision.

- N. **Confidentiality.** The Commission may subject any information required by this section to appropriate protective orders.

§ 7 NON-COMPLIANCE; SANCTIONS

- A. **Cure Period.** A competitive electricity provider that does not satisfy either the eligible resource or new renewable resource portfolio requirements of this Chapter during a compliance period, but has obtained eligible GIS certificates (or entitlements to qualifying facility power that may be used to satisfy the eligible resource portfolio requirement in Section 4) for service in the ISO-NE control area and has ownership or entitlement to energy from eligible resources or new renewable resources for service in the NMISA area that together correspond to at least two-thirds of either the eligible resource or new renewable resource portfolio requirements, may cure the deficiency over the next compliance period, so that over the two compliance periods the 3 portfolio requirements of this Chapter are satisfied.
- B. **Banked Compliance.** A competitive electricity provider may satisfy up to one-third of the portfolio requirements of this Chapter in any year through eligible GIS certificates for service in the ISO-NE control area and ownership or entitlement to energy from eligible resources or new renewable resources for service in the NMISA area associated with electricity production in the prior year. GIS certificates or energy used for compliance pursuant to this provision must be in excess of the prior year requirements and have not been previously used to satisfy a portfolio requirement in another jurisdiction.
- C. **Sanctions.** A competitive electricity provider that does not satisfy the portfolio requirements of this Chapter, allowing for the cure period provided for in subsection A, is subject to one or more of the following sanctions:
1. **License Revocation.** The Commission may revoke the competitive electricity provider's license pursuant to the procedures established in Chapter 305.
 2. **Penalties.** The Commission may impose monetary penalties pursuant to the procedures established in Chapter 305.
 3. **Other.** The Commission may impose any other sanction authorized by law that it determines appropriate, taking into account the facts and circumstances that resulted in the failure to satisfy the portfolio requirement.
 4. **Waiver.** The Commission may waive the imposition of sanctions upon a showing that the competitive electricity provider made good faith efforts but could not reasonably satisfy the portfolio requirements of this Chapter due to market conditions. The Commission shall provide interested persons with notice and an opportunity to be heard prior to waiving the imposition of sanctions pursuant to this paragraph.

§ 8 WAIVER OR EXEMPTION

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 104, 111, 1301, 3203(9), 3210, 3210-B; Resolves 1999, ch. 47; P.L. 1999, ch. 398, Sec. I-4; Resolves 2003, ch. 22.

EFFECTIVE DATE:

This rule was approved as to form and legality by the Attorney General on October 1, 1999. It was filed with the Secretary of State on October 5, 1999 and became effective on November 4, 1999.

NON-SUBSTANTIVE CORRECTIONS:

November 9, 1999 - APA Office Note added.

AMENDED:

This rule was approved as to form and legality by the Attorney General on June 20, 2003. It was filed with the Secretary of State on June 20, 2003 and became effective on July 20, 2003.

AMENDED:

This rule was approved as to form and legality by the Attorney General on November 5, 2004. It was filed with the Secretary of State on November 9, 2004 and became effective on November 14, 2004. A new Section 6 was inserted and the following sections renumbered.

AMENDED: This rule was approved as to form and legality by the Attorney General on October 31, 2007. It was filed with the Secretary of State on November 1, 2007 and became effective on November 6, 2007 (filing 2007-468).